

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

(1) ANTHONY P. TUFARO, D.D.S.,  
M.D., F.A.C.S.

Plaintiff,

v.

(1) STATE OF OKLAHOMA, *ex rel.*,  
BOARD REGENTS OF THE UNIVERSITY  
OF OKLAHOMA,

(2) JASON R. SANDERS, M.D., MBA, in  
his individual capacity and his official  
capacity as the Senior Vice President and  
Provost,

(3) JOHN P. ZUBIALDE, M.D., in his  
individual capacity and his official capacity as  
the Executive Dean of the College of  
Medicine,

(4) STEVEN M. SULLIVAN, D.D.S.,  
F.A.C.S., F.A.C.D., in his individual capacity  
and his official capacity as Chair of the  
Department of Surgical Sciences,

(5) KEVIN S. SMITH, D.D.S., in his  
individual capacity only;

(6) PAUL S. TIWANA, D.D.S., in his  
individual capacity only; and

(7) BARISH H. EDIL, M.D., FACS., in his  
individual capacity and his official capacity as  
the Chair of the Department of Surgery.

Defendants.

**Case No.: CIV-20-1138-J**

**(Removed from Oklahoma County  
District Court Case No: CJ-20-5001)**

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331 and 1441, Defendant, Steven M. Sullivan, in his

individual and official capacities (“Sullivan”), respectfully submits this Notice of Removal of the referenced action from the District Court of Oklahoma County, State of Oklahoma, to this Court. In support of its removal, Sullivan states the following:

### **JURISDICTION**

1. General. Under the provisions of 28 U.S.C. § 1331, this Court has original jurisdiction over this civil action. Pursuant to the provisions of 28 U.S.C. § 1441, the action may be removed to this Court, because Plaintiff claims violations of his civil rights pursuant to 42 U.S.C. §1983. (Exhibit 3, Petition, ¶ 11).

2. Identity of Defendant. Steven M. Sullivan is the proper name of the removing defendant in this action.

3. Federal Claims. Plaintiff’s claims against Sullivan are for violation of rights secured by the First and Fourteenth Amendments to the United States Constitution. (Exhibit 3, Petition, ¶11). Plaintiff also asserts claims against Sullivan under the Oklahoma Governmental Tort Claims Act, 51 O.S.A. §151, *et seq.* and for interference with a business relationship.

4. Consent to Removal. Pursuant to 28 U.S.C. §1446, all defendants have unanimously consented to the removal of this matter to federal court, including the State of Oklahoma *ex rel.* Board of Regents of the University of Oklahoma, Jason R. Sanders, John P. Zubialde, Kevin S. Smith, Paul S. Tiwana and Barish H. Edil.

5. Immunity. By consenting to removal, the University hereby reserves and does not waive any right to assert, or the protection of, any available constitutional, statutory, common law, or other provision that does, might, or could limit the Court’s

jurisdiction of the allegations of Plaintiff's Petition or any proposed amendment thereto, including allegations of entitlement to relief thereunder, including, but not limited to Eleventh Amendment immunity and sovereign immunity. *See Neiberger v. Hawkins*, 70 F.Supp.2d 1177, 1187-88 (D. Colo. 1999). The consent to removal in no way waives the right to immunity from liability retained by the University of Oklahoma with regard to all claims. *Trant v. Oklahoma*, 754 F.3d 1158, 1172-73 (10th Cir. 2014); *see also Hall v. Oklahoma Dept. of Rehabilitation Services*, No. CIV-17-497, slip op. (W.D. Okla. Feb. 20, 2018).

### **TIMELINESS OF REMOVAL**

5. Plaintiff filed his Petition on October 19, 2020.
6. Plaintiff served Sullivan with the Petition on October 22, 2020, claiming for the first time violation of civil rights pursuant to 42 U.S.C. §1983.
9. Notice of Removal is timely filed under 28 U.S.C. § 1446.

### **ATTACHMENTS**

10. Pursuant to 28 U.S.C. § 1446(a) and LCvR81.2, attached hereto as Exhibits 1-5, respectively, the following is a complete list of the process, pleadings, and orders that have been served and/or filed, along with a copy of the docket sheet of the case.

Exhibit 1 – Entry of Appearance of Courtney D. Powell on behalf of Plaintiff;

Exhibit 2 – Entry of Appearance of George Freedman on behalf of Plaintiff;

Exhibit 3 – Petition;

Exhibit 4 – Entry of Appearance of Shannon F. Davies; and

Exhibit 5 – Copy of the docket sheet.

Defendant, Sullivan, removes the State Court Action to the United States District Court for the Western District of Oklahoma.

Respectfully submitted,

s/Heidi J. Long

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*Attorneys for Defendant, Steven M. Sullivan*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 10, 2020, I electronically transmitted the attached document to the Clerk of Court using the ECF system for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Shannon F. Davies  
George Freedman  
Courtney D. Powell  
SPENCER FANE  
9400 N. Broadway Extension, Suite 600  
Oklahoma City, OK 73114  
*Attorneys for Plaintiff*

s/Heidi J. Long

Heidi J. Long